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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
HONORABLE JUDGE LARRY A. BURNS

UNITED STATES OF AMERICA,)	Case No. 08-CR-1635-LAB
)	
Plaintiff,)	Notice of Motion and Motion to Compel
)	Discovery
v.)	
)	Date: July 7, 2008
JORGE GUZMAN-MUNGUIA)	
)	Time: 2:00 p.m.
Defendant)	

INTRODUCTION

It is alleged that on or about April 22, 2008, within the Southern District of California, defendant JORGE GUZMAN-MUNGUIA did knowingly and intentionally import 5 kilograms and more, to wit: approximately 31.54 kilograms (69.38) pounds of cocaine, a Schedule II Controlled Substance, into the United States from a place outside thereof; in violation of Title 21 United States Code Sections 952 and 960.

GENERAL DISCOVERY

I.

MOTION TO COMPEL DISCOVERY AND PRESERVE EVIDENCE

Defendant moves for the production by the government of the following discovery and for the preservation of evidence. This request is not limited to those items that the

1 prosecutor knows of, but rather includes all discovery listed below that is in the custody,
2 control, care, or knowledge of any government agency. See generally Kyles v. Whitley, 514
3 U.S. 419 (1995); United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

4 (1) The Defendant's Statements. The Government must disclose to the defendant all
5 copies of any written or recorded statements made by the defendant; the substance of any
6 statements made by the defendant which the Government intends to offer in evidence at trial;
7 any response by the defendant to interrogation; the substance of any oral statements which the
8 Government intends to introduce at trial and any written summaries of the defendant's oral
9 statements contained in the handwritten notes of the Government agent; any response to any
10 Miranda warnings which may have been given to the defendant; as well as any other statements
11 by the defendant. Fed. R. Crim. P. 16(a)(1)(A) and (B). The Advisory Committee Notes and
12 the 1991 amendments to Rule 16 make clear that the Government must reveal all the
13 defendant's statements, whether oral or written, regardless of whether the government intends
14 to make any use of those statements.

15 (2) Arrest Reports, Notes and Dispatch Tapes. The defense also specifically requests
16 that all arrest reports, notes and dispatch or any other tapes that relate to the circumstances
17 surrounding his arrest or any questioning, if such reports have not already been produced in
18 their entirety, be turned over. This request includes, but is not limited to, any rough notes,
19 records, reports, transcripts or other documents in which statements of the defendant or any
20 other discoverable material is contained. Such material is discoverable under Fed. R. Crim. P.
21 16(a)(1)(A) and (B) and Brady v. Maryland, 373 U.S. 83 (1963). See also Loux v.
22 United States, 389 F.2d 911 (9th Cir. 1968). Arrest reports, investigator's notes, memos from
23 arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the
24 defendant are available under Fed. R. Crim. P. 16(a)(1)(B), Fed. R. Crim. P. 26.2, and Fed. R.
25 Crim. P. 12(h). Preservation of rough notes is requested, whether or not the government deems
26 them discoverable.

27 (3) Brady Material. Defendant requests all documents, statements, agents' reports, and
28 tangible evidence favorable to the defendant on the issue of guilt and/or which affects the

1 credibility of the government's case. Under Brady, impeachment as well as exculpatory
2 evidence falls within the definition of evidence favorable to the accused. United States v.
3 Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

4 (4) Any Information That May Result in a Lower Sentence Under The Guidelines. As
5 discussed above, this information is discoverable under Brady v. Maryland, 373 U.S. 83
6 (1963). This request includes any cooperation or attempted cooperation by the defendant, as
7 well as any information that could affect any base offense level or specific offense
8 characteristic under Chapter Two of the Guidelines. Also included in this request is any
9 information relevant to a Chapter Three adjustment, to a determination of the defendant's
10 criminal history, or to any other application of the Guidelines.

11 (5) Any Information That May Result in a Lower Sentence Under 18 U.S.C. § 3553.
12 After *United States v. Booker*, 543 U.S. ___, 125 S. Ct. 738 (2005), the Guidelines are merely
13 advisory and federal sentencing is governed by 18 U.S.C. § 3553, which requires a judge to
14 consider "any information about the nature of the circumstances of the offense." 18 U.S.C. §
15 3553(a)(1). This broad range of judicial discretion, combined with the mandate that "[no
16 limitation shall be placed on the information concerning the background, character, and
17 conduct of a person convicted of an offense which a court of the United States may receive and
18 consider for the purpose of imposing an appropriate sentence," 18 U.S.C. § 3661, means that
19 any information whatsoever may be "material ... to punishment," Brady, 373 U.S. at 87,
20 whether or not the government deems it discoverable.

21 (6) The Defendant's Prior Record. Evidence of prior record is available under Fed. R.
22 Crim. P. 16(a)(1)(D). Counsel specifically requests that the copy be complete and legible.

23 (7) Any Proposed 404(b) Evidence. Evidence of prior similar acts is discoverable
24 under Fed. R. Crim. P. 16(a)(1)(E) and Fed. R. Evid. 404(b) and 609. In addition, under Fed.
25 R. Evid. 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable
26 notice in advance of trial . . . of the general nature" of any evidence the government
27 proposes to introduce under Fed. R. Evid. 404(b) at trial. The defendant requests that such
28 notice be given three weeks before trial in order to give the defense time to adequately

1 investigate and prepare for trial.

2 (8) Evidence Seized. Evidence seized as a result of any search, either warrant less or
3 with a warrant, is discoverable under Fed. R. Crim. P. 16(a)(1)(E).

4 (9) Request for Preservation of Evidence. The defense specifically requests that all
5 dispatch tapes or any other physical evidence that may be destroyed, lost, or otherwise put out
6 of the possession, custody, or care of the government and which relate to the arrest or the
7 events leading to the arrest in this case be preserved. This request includes, but is not limited
8 to, the results of any fingerprint analysis, alleged narcotics, the defendant's personal effects, the
9 vehicle, and any other evidence seized from the defendant, or any third party. It is requested
10 that the government be ordered to question all the agencies and individuals involved in the
11 prosecution and investigation of this case to determine if such evidence exists, and if it does
12 exist, to inform those parties to preserve any such evidence.

13 (10) Tangible Objects. The defense requests, under Fed. R. Crim. P. 16(a)(1)(E) the
14 opportunity to inspect and copy as well as test, if necessary, all other documents and tangible
15 objects, including photographs, books, papers, documents, photographs of buildings or places
16 or copies of portions thereof which are material to the defense or intended for use in the
17 government's case-in-chief or were obtained from or belong to the defendant.

18 (11) Evidence of Bias or Motive to Lie. The defense requests any evidence that any
19 prospective government witness is biased or prejudiced against the defendant, or has a motive
20 to falsify or distort his or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987);
21 United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988).

22 (12) Impeachment evidence. Defendant requests any evidence that any prospective
23 government witness has engaged in any criminal act whether or not resulting in a conviction
24 and whether any witness has made a statement favorable to the defendant. See Fed. R. Evid.
25 608, 609 and 613. Such evidence is discoverable under Brady v. Maryland. See United States
26 v. Strifler, 851 F.2d 1197 (9th Cir. 1988) (witness' prior record); Thomas v. United States, 343
27 F.2d 49 (9th Cir. 1965) (evidence that detracts from a witness' credibility).

28 (13) Evidence of Criminal Investigation of Any Government Witness. The defense

1 requests any evidence that any prospective witness is under investigation by federal, state or
2 local authorities for any criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir.
3 1985).

4 (14) Evidence Affecting Perception, Recollection, Ability to Communicate. Defendant
5 requests any evidence, including any medical or psychiatric report or evaluation, tending to
6 show that any prospective witness's ability to perceive, remember, communicate, or tell the
7 truth is impaired; and any evidence that a witness has ever used narcotics or other controlled
8 substance, or has ever been an alcoholic. United States v. Strifler, 851 F.2d 1197 (9th Cir.
9 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th Cir. 1980).

10 (15) Witness Addresses. The defense requests the name and last known address of
11 each prospective government witness. See United States v. Napue, 834 F.2d 1311 (7th Cir.
12 1987); United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure to interview government
13 witnesses by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181 (9th Cir.
14 1979), overruled on other grounds by Luce v. United States, 469 U.S. 38 (1984) (defense has
15 equal right to talk to witnesses). The defendant also requests the name and last known address
16 of every witness to the crime or crimes charged (or any of the overt acts committed in
17 furtherance thereof) who will not be called as a government witness. United States v. Cadet,
18 727 F.2d 1453 (9th Cir. 1984).

19 (16) Name of Witnesses Favorable to the Defendant. The defense requests the name of
20 any witness who made any arguably favorable statement concerning the defendant or who
21 could not identify him or who was unsure of his identity, or participation in the crime charged.
22 Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North Carolina, 637 F.2d 213,
23 223 (4th Cir. 1980); Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir. 1978); Hudson v. Blackburn,
24 601 F.2d 785 (5th Cir. 1979).

25 (17) Statements Relevant to the Defense. The defense requests disclosure of any
26 statement that may be "relevant to any possible defense or contention" that he might assert.
27 United States v. Bailleaux, 685 F.2d 1105 (9th Cir. 1982). This would include Grand Jury
28 transcripts which are relevant to the defense motion to dismiss the indictment.

(18) Jencks Act Material. The defense requests all material to which defendant is

1 entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, reasonably in advance of trial, including
2 dispatch tapes. A verbal acknowledgment that "rough" notes constitute an accurate account of
3 the witness' interview is sufficient for the report or notes to qualify as a statement under
4 § 3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-92 (1963).

5 (19) Giglio Information. Pursuant to Giglio v. United States, 405 U.S. 150 (1972), the
6 defendant requests all statements and/or promises, expressed or implied, made to any
7 government witnesses, in exchange for their testimony in this case, and all other information
8 which could arguably be used for the impeachment of any government witnesses.

9 (20) Reports of Scientific Tests or Examinations. Pursuant to Fed. R. Crim. P.
10 16(a)(1)(F), the defendant requests the reports of all tests and examinations conducted upon the
11 evidence in this case. Including, but not limited to, any fingerprint testing done upon any
12 evidence seized in this case, that is within the possession, custody, or control of the
13 government, the existence of which is known, or by the exercise of due diligence may become
14 known, to the attorney for the government, and which are material to the preparation of the
15 defense or are intended for use by the government as evidence in chief at the trial.

16 (21) Henthorn Material. The defendant requests that the prosecutor review the
17 personnel files of the officers involved in his arrest, and those who will testify, and produce to
18 him any exculpatory information at least two weeks prior to trial and one week prior to the
19 motion hearing. This includes all citizen complaints and other related internal affairs
20 documents involving any of the immigration officers or other law enforcement officers who
21 were involved in the investigation, arrest and interrogation of defendant. See United States v.
22 Henthorn, 931 F.2d 29 (9th Cir. 1991). In addition, he requests that if the government is
23 uncertain whether certain information is to be turned over pursuant to this request, that it
24 produce such information to the Court in advance of the trial and the motion hearing for an in
25 camera inspection.

26 (22) Informants and Cooperating Witnesses. The defense requests disclosure of the
27 names and addresses of any informants or cooperating witnesses used or to be used in this case.
28 The government must disclose the informant's identity and location, as well as disclose the
existence of any other percipient witness unknown or unknowable to the defense. Roviaro v.

1 United States, 353 U.S. 53, 61-62 (1957). The defense also requests disclosure of any
2 information indicating bias on the part of any informant or cooperating witness. Giglio v.
3 United States, 405 U.S. 150 (1972). Such information would include what, if any,
4 inducements, favors, payments, or threats were made to the witness to secure cooperation with
5 the authorities.

6 (23) Expert Witnesses. Pursuant to Fed. R. Crim. P. 16(a)(1)(G), the defendant
7 requests a written summary of the expert testimony that the government intends to use at trial,
8 including a description of the witnesses' opinions, the bases and the reasons for those opinions,
9 and the witnesses' qualifications.

10 (24) Residual Request. The defense intends by this discovery motion to invoke his
11 rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure
12 and the Constitution and laws of the United States. This request specifically includes all
13 subsections of Rule 16. Defendant requests that the government provide him and his attorney
14 with the above requested material sufficiently in advance of trial.

15
16 Date: May 29, 2008

/s/ Merle N. Schneidewind

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19 Attorney for the Defendant
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HONORABLE JUDGE LARRY A. BURNS

UNITED STATES OF AMERICA,)
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Plaintiff,)
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v.)
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JORGE GUZMAN-MUNGUIA)
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Defendant)

Case No. 08CR-1635-LAB

CERTIFICATE OF SERVICE

Counsel for Defendant thereby certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

Mailing Information for a Case: 3:08CR1635

Electronic Mail Notice List

The following are those who are currently on the list to receive email notices for this case.

3:08 1635 Notice has been electronically mailed to:

Christina M. McCall Christina.McCall@usdoj.gov

1 The following is the list of attorneys who are not on the list to receive e-mail notices for
2 this case (who therefore require manual noticing). You may wish to use your mouse to
3 select and copy this list into your word processing program in order to create notices or
4 labels for these recipients.
5

6 (No Manual recipients)
7
8
9

10 I declare under penalty of perjury that the foregoing is true and correct executed on
11
12 June 3, 2008
13
14
15

16
17 /s/ Merle N. Schneidewind
18 Merle N. Schneidewind
19 Attorney for Defendant
20 Maria Armenta
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